BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

GEORGE WATERS
(Claimant)
[redacted]

PRECEDENT
BENEFIT DECISION
No. P-B-126
Case No. 71-3948

S.S.A. No.

WHITTAKER CORPORATION
COMPASS CONTAINER DIVISION
(Employer)
c/o National Employers Counsel, Inc.

Employer Account No.

The claimant appealed from Referee's Decision No. OAK-3722 which held the claimant was disqualified from benefits under section 1256 of the Unemployment Insurance Code and that the employer's reserve account was relieved of charges under section 1032 of the code. We received oral argument from all parties.

STATEMENT OF FACTS

In June 1970 the claimant was assigned to the above employer as a shipping and receiving clerk by a private employment agency working on an hourly wage. This relationship extended for approximately five weeks and the claimant was then hired directly by the above employer, rendering in effect the same duties, but on a salary basis of $850 per month. He was then considered as a management employee. The claimant resigned upon written notice August 15, 1970.

There is a conflict in the record as to the precise basis for the separation. The claimant contends that he held parallel responsibilities with respect to his duties

as that held by the general plant foreman as to the duty of the plant operations. The claimant further contends that the plant foreman consistently interfered with the claimant's personnel, transferring them without notice to other duties, addressing the claimant in abusive and obscene language. It is the claimant's contention that at the time he was hired as a direct management employee he was to report directly to the plant superintendent.

Witnesses on behalf of the employer, one of whom was the plant foreman, the other being the superintendent, testified that while the claimant was a salaried employee holding supervisory status, the function of his specific department was subordinate to that of the plant foreman, and that the claimant was not a management employee nor did he have equal and coexisting responsibilities with the plant foreman. While the foreman denied using obscene language, it was developed that the foreman was a "driver" and harsh language was occasionally used, but not in connection with a specific individual. Management also contends that the claimant left work because of his dislike of accepting instructions from, or being a subordinate to, the plant foreman.

The claimant did not register for work with the Department to file an additional claim for benefits until December 1970. Notice of the new claim filed was mailed to the employer on December 10, 1970 and the response was received from the employer under the postmark date of December 21.

REASONS FOR DECISION

Section 1256 of the Unemployment Insurance Code provides that a claimant shall be disqualified from benefits if he has left his most recent work voluntarily without good cause. If it is similarly ruled under section 1030 of the code, an employer's reserve account may be relieved of charges under section 1032 of the code.

Good cause for leaving work is an intangible concept which must be determined in light of the efficient or real cause of the separation in issue. (Appeals Board Decision No.P-B-8) In general, however, there is

good cause for the voluntary leaving of work when the facts disclose a real, substantial and compelling reason of such nature as would cause a reasonable person genuinely desirous of retaining employment to take similar action. (Appeals Board Decision No. P-B-27) Good cause may be found for leaving work where the conditions of employment are so onerous as to constitute a threat to the physical or mental well-being of an employee or where the actions of the supervisor are particularly harsh and oppressive. On the other hand, mere dissatisfaction with coemployees or mere resentment of supervision is a personal, noncompelling reason for the abandonment of work.

As to the foreman's conduct toward the claimant herein, a sharp conflict exists. There is, however, consistency in the testimony of both the employer and the claimant that the claimant was resentful of supervision and we find that the claimant's primary basis for leaving work was his dislike of accepting instructions from the plant foreman, which the claimant believed placed him in a subordinate position to the foreman. We are also unable to find a breach of contract of employment. Accordingly, we find that the claimant left work for personal, noncompelling reasons under the code and is subject to disqualification under section 1256 of the code.

In addition to the merits of his appeal, the claimant argues that the Department erred in the procedures it followed during the investigative stages of the claim. It is urged that the employer's failure to provide notice of the claimant's separation within five days of the termination of the employment relationship establishes a presumption that the claimant left work under nondisqualifying reasons. It is further contended that the basic purpose of unemployment compensation is to provide interim relief to the class of people who are involuntarily unemployed and that the employer, in failing to supply all of the facts available to it in its initial protest to the notice of claim filed, precludes the Department from conducting any investigation. It is argued that the weight of the evidence at that point compels a finding that the claimant was eligible for benefits, citing Thomas v. California Employment Stabilization Commission (1952),

39 Cal. 2d 501, 247 Pac. 2d 561 and Java v. California Department of Human Resources Development (1971), 91 Sup. Ct. 1347. The claimant acknowledges that 37 Ops. Cal. Atty. Gen. 18 is contra but also points out there is no judicial law upon the precise point.

Section 1256 of the Unemployment Insurance Code, as it reads in its entirety, provides:

> "An individual is disqualified for unemployment compensation benefits if the director finds that he left his most recent work voluntarily without good cause or that he has been discharged for misconduct connected with his most recent work.
>
> "An individual is presumed to have been discharged for reasons other than misconduct in connection with his work and not to have voluntarily left his work without good cause unless his employer has given written notice to the contrary to the director within five days after the termination of service, setting forth facts sufficient to overcome the presumption. If the employer files such notice, the question shall immediately be determined in the same manner as benefit claims.
>
> "An individual whose employment is terminated under the compulsory retirement provisions of a collective bargaining agreement to which the employer is a party, shall not be deemed to have left his work without good cause."

The first two paragraphs of such section were in substance set forth as section 55 of the Unemployment Insurance Reserves Act of 1937 which amended the original Act of 1935. The period within which notice should be given was at that time set forth as ten days. In the 1939 amendment to the Act, the above section was changed to section 58, and the period within which notice was to be given was reduced to five days. It was again amended to its present form in 1945 and has continued unchanged since such time. In codifying the

Unemployment Insurance Act in 1953, it was specifically provided that the then existing law was merely restated without change unless specifically so provided. (Section 2 Unemployment Insurance Code)

Were the law in its entirety to now read as it was originally enacted, there might be some merit for the claimant's contention that a presumption exists that a claimant left work under nondisqualifying conditions unless the employer complied with the statutory requirements of submitting notice within the time provided subsequent to the date of separation. In 1947, however, it was specifically provided that notice of the filing of a claim be given to the last employer and to all base period employers inviting the submission of any facts relating to the claimant's eligibility for benefits. (Section 67 Unemployment Insurance Act, 1947) Such sections have subsequently been carried forward as sections 1327 and 1328 of the Unemployment Insurance Code. Accordingly, we must view the law as it presently exists and in its present context.

With respect to the presumption the California Evidence Code provides in section 600, a presumption is an assumption of fact that the law requires to be made from another fact or group of facts found or otherwise established in the action. A presumption is not evidence.

Section 601 of the Evidence Code reads:

> "A presumption is either conclusive or rebuttable. Every rebuttable presumption is either (a) a presumption affecting the burden of producing evidence or (b) a presumption affecting the burden of proof."

A presumption may not be conclusive unless specifically so provided by law. (620 California Evidence Code) There is nothing in the Unemployment Insurance Code nor in the Evidence Code which makes the presumption in section 1256 conclusive. Accordingly, it must be rebuttable.

In Maywood Glass Co. v. Stewart, 170 Cal. App. 2d 719 (1959), the court interpreted the meaning of "misconduct" as found in section 1256. The court there observed that the claimant's employment was terminated on November 26, 1957. It was not until December 5 that the employer reported to the Department the reasons for the claimant's discharge. If the presumption in section 1256 had been conclusive, there would have been no need for the court to analyze section 1256, as the trial court and the Department would have been foreclosed from considering whether the conduct constituted misconduct.

The presumption that a claimant who is unemployed shall have left work under nondisqualifying conditions, shall stand as a fact only in the absence of any evidence to the contrary. The Department has from the very beginning been charged with the responsibility of determining the eligibility of a particular claimant within the framework of the existing laws. A finding of ineligibility may well be made, irrespective of any information submitted by the employer. However, the employer may also have introduced sufficient evidence to overcome such presumption and to establish to the satisfaction of the Department that the claimant in leaving work voluntarily did so without good cause, or, if discharged, was discharged for misconduct under the code.

Concededly the burden is initially upon the employer under either alternative to overcome the presumption if he is to protect his reserve account. (California-Portland Cement Co. v. CUIAB (1960), 178 Cal. App. 2d 263, 3 Cal. Rptr. 37; Maywood Glass Co. v. Stewart (1959), 170 Cal. App. 2d 719, 339 Pac. 2d 947) The Department, however, administratively charged with the responsibility of determining eligibility of any particular claimant, must consider all of the facts available to it, and, while the Department may not be legally obliged to conduct a full investigation, it has every right to do so.

In the facts before us, however, the employer, in responding to the notice of new claim filed and setting forth all of the facts available to it, complied with the statutory mandates imposed upon it. The Department is equally under a mandate to consider

such facts and render an opinion as to the claimant's eligibility for benefits. (Section 1328 of the Unemployment Insurance Code) The duty imposed on the Department by section 1328 could not be performed were the section 1256 presumption conclusive. The determination of the Department is subject to review under section 1328 by a referee and section 1336 by this board.

The remedial nature of the legislation and the underlying purpose for which it was enacted has been recognized by the courts of this state. (Empire Star Mines v. California Employment Commission (1946), 28 Cal. 2d 43, 168 Pac. 2d 686; California-Portland Cement Co. v. CUIAB (1960), 178 Cal. App. 2d 263, 3 Cal. Rptr. 37; Whitcomb Hotel v. California Employment Commission (1944), 24 Cal. 2d 753, 151 Pac. 2d 233; Garcia v. California Employment Stabilization Commission (1945), 71 Cal. App. 2d 107, 161 Pac. 2d 972)

The Thomas case cited by the claimant, although recognizing the basic reason for the enactment, was concerned with the entitlement to benefits of certain claimants initially engaged in a trade dispute. While the court therein did state that once the eligibility of a claimant has been established the payment of funds is an administrative function only, it does not state that the Department had no authority to conduct a proper investigation into the eligibility of a particular claimant.

The principles set forth by the Java case are equally inapropos to the claimant's contention. The issue there was whether claimants having once been deemed eligible for benefits could have those benefits withheld pending a hearing upon an appeal by the employer. While the court did recognize that under some circumstances "If the employer fails to present any evidence, he has in effect defaulted, and neither he nor the State can with justification complain if, on a prima facie showing, benefits are allowed," the court reviewed the procedures observed by the Department as spelled out by the California Code and the local office manuals and specifically held that the Department has a responsibility to conduct its own investigation.

Since the employer has in fact satisfied the statutory requirements set forth for its own benefit, the Department would be remiss in its responsibility were it to deny the employer recognition of those facts in the performance of its statutory duty.

DECISION

The decision of the referee is affirmed. The claimant is disqualified for benefits under section 1256 of the code. The employer's reserve account is relieved of charges under section 1032 of the code.

Sacramento, California, January 27, 1972.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

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